

DEVELOPER FEES

In order to finance the construction or reconstruction of school facilities needed to accommodate students coming from new development, the Board of Trustees may establish, levy and collect developer fees on residential, commercial and industrial construction within the District, subject to restrictions specified by law and administrative regulation.

Appeals Process for Protests by Developers

~~The Superintendent or designee shall establish an appeals process for the handling of protests by developers. (Education Code 17621)~~

*Legal Reference:*EDUCATION CODE

~~17070-17077.10 Leroy F. Greene School Facilities Act of 1998~~

~~17582 District deferred maintenance fund~~

~~17620-17626 Levies against development projects by school districts~~

GOVERNMENT CODE

~~6061 One time notice~~

~~6066 Two weeks' notice~~

~~65352.2 Level 2 funding notification requirement~~

~~65864-65869.5 Development agreements~~

~~65995-65998 Payment of fees against a development project~~

~~66000-66008 Fees for development projects~~

~~66016-66018.5 Development project fees~~

~~66020-66025 Protests and audits~~

CODE OF REGULATIONS, TITLE 2

~~1859-1859.106 School facility program~~

COURT DECISIONS

~~*Dolan v. City of Tigard* (1994) 114 S.Ct. 2309~~

*Management Resources:*WEB SITES

~~Department of General Services, Office of Public School Construction:~~

~~<http://www.opse.dgs.ca.gov>~~

Level 1 Fees: Residential, Commercial and Industrial Construction

For Level 1 fees, Government Code 65995 establishes a maximum amount of fees, which is adjusted for inflation by the State Allocation Board (SAB) every two years. Before taking action to establish, increase, or impose Level 1 developer fees, the Board shall conduct a fee justification study which: (Government Code 66001)

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1. Identifies the purpose of the fee and the use to which the fee will be put
2. Determines a reasonable relationship between the fee's use and the type of development project for which the fee is imposed
3. Determines a reasonable relationship between the need for the facility and the type of development project for which the fee is imposed
4. Determines a reasonable relationship between the amount of the fee and the cost of the facility or portion of the facility attributed to the development for which the fee is imposed

Before levying developer fees or prior to increasing an existing fee, the Board shall hold a public hearing. The Superintendent or designee shall mail notice of the time and place of the meeting at which a public hearing shall occur, including a general explanation of the matter to be considered and a statement that the required data are available, at least 14 days prior to the meeting to any interested party who has requested such information. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The District may charge a fee reasonably related to the cost of providing these materials. (Government Code 66016)

Information on the anticipated amount of fees, other available funds and funding sources, and the estimated cost of planning, land acquisition, and school construction shall be made available to the public at least 10 days before the hearing. (Government Code 66016)

The resolution shall set forth:

1. The purpose of the fee, the use to which the fee is to be put, and the public improvement(s) that the fee will be used to finance (Government Code 66001, 66006)
2. The Board's findings of reasonable relationship which justify the fees pursuant to Government Code 66001
3. If the District requires payment of the fee at a time earlier than the date of final inspection or the issuance of a certificate of occupancy, the District's determination of either of the following conditions which allow collection of the fees at the time when building permits are issued: (Government Code 66007)
 - a. That the fees are to reimburse the District for previous expenditures
 - b. That the fees shall be collected for public improvements or facilities for which an account has been established, funds have been appropriated, and the District has adopted a proposed construction schedule or plan

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In the case of any commercial or industrial development, the Board shall make findings on either an individual project basis or on the basis of categories of commercial or industrial development.

Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse. The Board shall also conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the District. (Education Code 17621)

Level 2 Fees: Residential Construction

In order to impose Level 2 residential construction fees within the limits of Government Code 65995.5, the Board shall, in addition to fulfilling the requirements above for Level 1 fees, undertake the following: (Government Code 65995.5)

1. Make a timely application to the State Allocation Board (SAB) for new construction funding and be determined to be eligible by SAB
2. Conduct and adopt a school facility needs analysis pursuant to Government Code 65995.6
3. Satisfy at least two of the requirements set forth in Government Code 65995.5(b)(3)(A-D)

At least 45 days prior to completion of the school facility needs analysis, the Board shall notify and provide copies of the analysis to the planning commission or agency of the city or county with land use jurisdiction within the District. Upon request of either party, the District and city or county shall meet within 15 days following notification. (Government Code 65352.2)

The Board shall adopt the school facility needs analysis by resolution at a public hearing. (Government Code 65995.6)

This analysis shall not be adopted until the analysis, in its final form, has been made available to the public for a period of not less than 30 days. Prior to its adoption, the public shall have the opportunity to review and comment on the analysis and the Board shall respond to written comments it receives regarding the analysis. (Government Code 65995.6)

Not less than 30 days prior to the hearing, notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the District. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous places within the District's jurisdiction not less than 30 days prior to the hearing. (Government Code 65995.6)

In addition, the Superintendent or designee shall mail a copy of the needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was

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made 45 days prior to the hearing. The District may charge a fee reasonably related to the cost of providing these materials. (Government Code 65995.6)

During the period of public review, the analysis shall be provided to the local agency responsible for land use planning for its review and comment. (Government Code 65995.6)

The school facility needs analysis may be revised at any time. The revision is subject to the same conditions and requirements applicable to the adoption of the analysis. The existing school building capacity shall be recalculated as part of any revision to the needs analysis. (Government Code 65995.6)

The fees authorized by Government Code 65995.6 and 65995.7 shall be adopted by resolution as part of the adoption or revision of the school facilities needs analysis. The fees shall take effect immediately upon adoption of the resolution and may not be effective for more than one year. (Government Code 65995.6)

Level 3 Fees: Residential Construction

Government Code 65995.7 authorizes a district that is eligible to receive the Level 2 funding the authority to levy a still higher fee on residential construction (Level 3 funding) upon determination by SAB that state funds are no longer available.

The notice and hearing requirements, resolution requirement, and term of effectiveness for Level 3 fees shall be the same as the requirements for Level 2 fees as specified above. (Government Code 65995.7)

Use of Fees

The Board shall review information provided by the Superintendent or designee pursuant to Government Code 66006 regarding each account or fund into which developer fees have been deposited, at the first regularly scheduled public Board meeting which occurs 15 days after the information is made available to the public. Fifteen- day prior notice of this meeting shall be mailed to any parties filing a written request pursuant to Government Code 66006. (Government Code 66006)

In addition to discharging its public disclosure duties regarding the levying of developer fees, the Board shall, for the fifth fiscal year after the first deposit into the account or fund and every five years thereafter, make all of the following findings with respect to the portion of the account or fund that remains unexpended, whether committed or uncommitted: (Government Code 66001)

1. Identify the purpose to which the fee is to be put
2. Demonstrate a reasonable relationship between the fee and the purpose for which it is charged

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- 3. Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements originally identified
- 4. Designate the approximate dates on which the funding referred to in item #3 is expected to be deposited into the appropriate account or fund

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State References

2 CCR 1859-1859.199

Ed. Code 17070.10-17077.10

Ed. Code 17582

Ed. Code 17620-17626

Gov. Code 6061

Gov. Code 6066

Gov. Code 65352.2

Gov. Code 65864-65869.5

Gov. Code 65995-65998

Gov. Code 66000-66008

Gov. Code 66016-66018.5

Gov. Code 66020-66025

Management Resources References

Court Decision

Website

Cross References-Codes

7131

7210

7212

Description

Leroy F. Greene School Facilities Act - <https://simbli.eboardsolutions.com/SU/nuvesXH7AflQqDOmGTa3wA==>

Leroy F. Greene School Facilities Act of 1998 - <https://simbli.eboardsolutions.com/SU/fu4PsUtUAb4qYYOY9breHg==>

District deferred maintenance fund

Levies against development projects by school districts

One time notice

Two weeks' notice

Communicating and coordinating of school sites

Development agreements

Developer fees

Fees for development projects

Development project fees

Protests and audits

Description

A.M. v. Albertsons, LLC, (2009) Cal.App.4th 455

AASA The School Superintendents Association - <https://simbli.eboardsolutions.com/SU/MOaF8AO8cslshSlfGc13QQoEQ==>

Description

Relations With Local Agencies -

<https://simbli.eboardsolutions.com/SU/gSigOkghdaSslsh4y0plusplusMrM4w==>

Facilities Financing -

<https://simbli.eboardsolutions.com/SU/cRK5YTNBgZiwCEWOUi9cdQ==>

Mello-Roos Districts -

<https://simbli.eboardsolutions.com/SU/EE9jFvxqFAHQXxgo8klHrg==>